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TRANSMITTAL OF APPEAL BRIEF (Small Entity)	Docket No. DEVR101
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In Re Application of: **ROBIN KAY DEVERICH**

Application No.	Filing Date	Examiner	Customer No.	Group Art Unit	Confirmation No.
10/716,123	11/17/2003	Shih-Yung Hsieh	039510	2837	6092

Invention: **TEACHING SYSTEM AND METHOD FOR STRINGED MUSICAL INSTRUMENTS**

COMMISSIONER FOR PATENTS:

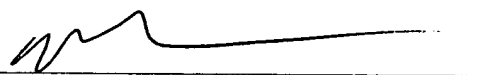
Transmitted herewith in triplicate is the Appeal Brief in this application, with respect to the Notice of Appeal filed on: ^{DATED}
March 21, 2005

☒ Applicant claims small entity status. See 37 CFR 1.27

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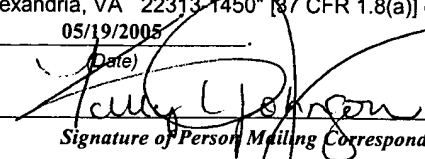
Signature

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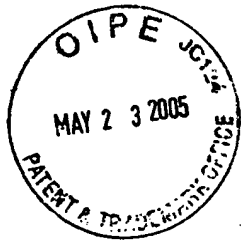
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PATENT APPLICATION
DOCKET NO. DEVR101

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant	:	Robin Kay Deverich
Appl. No.	:	10/716,123
Filed	:	November 17, 2003
For	:	TEACHING SYSTEM AND METHOD FOR STRINGED MUSICAL INSTRUMENTS
Examiner	:	Shih-Yung Hsieh
Group Art Unit	:	2837
Confirmation No.	:	6092

ON APPEAL TO THE BOARD OF PATENT APPEALS AND INTERFERENCES

APPEAL BRIEF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Appellant appeals the rejection of Claim 7, in the Final Office Action dated December 21, 2004, in the above-captioned patent application.

I. REAL PARTY IN INTEREST

The real party in interest is the inventor, Robin Kay Deverich.

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II. RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to Appellant, Appellant's legal representative, or assignee which will directly affect, be directly affected by, or have a bearing on the Board's decision pending appeal.

III. STATUS OF THE CLAIMS

Claims 1-7 remain in this case. Claims 1-6 are allowed. Claim 7 is under final rejection and before the Board in this appeal. A clean copy of Claim 7 appears in the Appendix.

IV. STATUS OF THE AMENDMENTS

There are no unentered amendments. No claim pending in the present case has been amended subsequent to the Final Office Action mailed on December 21, 2004.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER

When playing sheet music, students of stringed musical instruments must learn which finger to use on which string, and in which hand position along the fingerboard of the instrument they should place their fingers in order to produce the desired notes. See specification of the present application, paragraph [0003].

The present Claim 7 relates to a system for instructing a student to play music on a stringed instrument having a fingerboard. The system comprises sheet music comprising a musical staff and musical notes with colored fingering numbers placed above the musical notes. The colored fingering numbers indicate the string on which the student should place a finger and indicate the hand position of the student's hand on the fingerboard and the finger that should be used. See claim 7, listed in the Claims Appendix of this Brief.

For example, in one embodiment which would fall within the scope of Claim 7, each string of the instrument is assigned a different color. See the specification, page 7, paragraph [0025] and

Table 1. Different hand positions may be indicated by assigning a variation in the brightness, saturation, and/or hue of the assigned string colors. Specification, page 9, paragraphs [0031] to [0033] and Table 3. Fingering numbers placed over musical notes on a staff are colored according to the assigned string color with the appropriate variations in color indicating hand position. See Figure 5 and the corresponding description on page 11, paragraphs [0037] to [0040]. This embodiment provides one example of the manner in which the colored fingering numbers may indicate the string on which the student should place a finger and indicate the hand position of the student's hand on the fingerboard and the finger that should be used.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claim 7 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Kraft in view of Rickey.

VII. ARGUMENT

In the Final Office Action mailed December 21, 2004, the Office rejected claim 7 as being unpatentable over U.S. Patent No. 1,009,671 ("Kraft") in view of U.S. Patent No. 3,554,074 ("Rickey"). According to the Office, Kraft discloses a system for instructing a student to play music on a stringed instrument having a fingerboard, the system comprising sheet music having a musical staff and musical notes with fingering numbers placed both above and below the notes for indicating the fret on the neck of the instrument to be engaged and the strings to be acted on in articulating the respective notes. The Office admits that Kraft's system fails to teach colored fingering numbers placed above the musical notes. See Final Office Action, page 2.

In an attempt to provide the missing teachings of Kraft, the Office has cited Rickey, which the Office alleges teaches a device having colored fingering numbers. According to the

Office, it would have been obvious to one of ordinary skill in the art to modify Kraft's system to include colored fingering numbers placed above the musical notes for the purpose of instructing a student the fingering corresponding to the string. Final Office Action, page 3. Appellant respectfully traverses the rejection for the reasons outlined below.

Establishing a *prima facie* case of obviousness requires, among other things, that all the claim limitations be taught or suggested by the prior art, and that there be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. See M.P.E.P. § 2143. The Federal Circuit has held that determinations of *prima facie* obviousness must be supported by a finding of "substantial evidence". See *In re Zurko*, 258 F.3d 1379, 1386 (Fed. Cir. 2001). Unless "substantial evidence" found in the record supports the factual determinations central to the issue of patentability, the rejection is improper and should be withdrawn. See *Zurko*, 258 F.3d at 1386.

In the present case, there is no motivation to combine the Kraft and Rickey references, as asserted by the Office. The Kraft and Rickey references are directed to vastly different systems of teaching music, and the teachings by Rickey regarding the use of color simply do not apply to the system of Kraft. Furthermore, even if, for the sake of argument only, one of ordinary skill in the art were to combine the teachings of Kraft and Rickey as suggested by the Office, it would not result in the Appellant's invention, as claimed, since all the limitations of claim 7 are not taught by the references.

Kraft teaches a means for representing music having a musical staff A provided with a series of notes B, as illustrated in Figure 1. See Kraft, page 1, lines 95 to 99. Below the notes a series of numerals B' are arranged for indicating the frets on the neck of the instrument to be

engaged by the fingers or thumb of the player. Kraft, page 1, line 102 to page 2, line 2. Above the note symbols B a series of small parallel lines C are arranged for the purpose of indicating to the player the particular strings to be acted on. The string indicating lines are arranged in parallel to each other and to the direction of the stems of the note symbols. Kraft, page 2, lines 17-24.

As admitted by the Office, Kraft does not recite colored fingering numbers placed above the musical notes. Rather, the notes and other symbols are only illustrated in black and white, and Kraft does not mention the use of color anywhere in the specification.

Rickey teaches a multi-sheet adjustable slide chart for conveying information useful for assisting violinists in the art of playing the violin. The slide chart display includes three separate regions which function in a coordinated manner, including a simulated violin fingerboard region 20, a key signature region 22, and a graphical notation region 24. See Figure 1. The slide chart display is formed by juxtaposing four separate sheets one on top of the other as illustrated in Figure 1. A first fixed information sheet 15 forms the top layer, followed by a second slidable information sheet 16 (Figure 2), a third fixed information sheet 17 (Figure 3) and a fourth slidable information sheet 18 (Figure 4). The desired information is displayed to the user by sliding the second slidable information sheet 16 (Figure 2) and/or the fourth slidable information sheet 18 (Figure 4) in relation to the fixed information sheets 15 and 17. See generally column 3 line 58 to column 4, line 38.

Rickey teaches employing color in the chart to allow the user to easily discriminate between the various indicia displayed in the fingerboard region 20 and to aid the student in coordinating that information with corresponding information in the graphical notation region 24. As illustrated in Figure 1, the fingerboard region 20 visually displays the names of the tones and the proper fingering on a simulated violin keyboard. The strings of the simulated keyboard

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are color coded, as are the fingering and notation information on the fourth information sheet which corresponds to the colored string illustrations displayed in this region. See Figure 1, column 5, line 73 to column 6, line 5; and column 9, lines 38 to 54. According to Rickey, the purpose of employing color is to visually direct the student's eye to the desired indicia since color is one of the most effective forms of discriminating between various sets of indicia. See column 9, lines 49 to 52.

Colors corresponding to the colored strings illustrated in the fingerboard region 20 are also employed in the graphic notation region 24, as shown in Figure 1. This allows the user to look for the color corresponding to the string in the fingerboard region 20 and then see graphically where the corresponding note appears on the musical scale in the graphic notation region 24. Thus, the color coordinated code visually assists the student in moving from the fingerboard region 20 to the information provided in the graphical notation region 24. See Abstract; column 9, lines 53 to 55; and column 10, lines 17 to 21.

Contrary to the Office's assertions, one of ordinary skill in the art would not be motivated to apply the use of color, as taught by Rickey, in the Kraft system, since the Kraft system is so different from the Rickey system that Rickey's teachings simply do not apply. As pointed out above, Rickey displays a relatively large amount of information to the user by means of a complex, multisheet adjustable slide chart having three distinct regions for displaying information to the user. The information in the Rickey system is color coded to aid the user in discriminating among the relatively large amount of information displayed by visually directing the user's eyes to desired indicia on the chart. The Kraft system, on the other hand, does not require a user to discriminate between sets of information displayed on a fingerboard in a manner similar to the Rickey system. Nor does the Kraft system require the user to coordinate relatively

large amounts of information between various distinct regions on the page, as in Rickey. Instead, as discussed above, the Kraft system is a relatively simple means for representing music having a musical staff provided with a series of notes, not unlike a standard sheet music system. The numerals B' and parallel lines C used in Kraft are easily distinguishable one from the other and are arranged above and below the notes in a manner which allows the user to easily associate them with the appropriate notes on the page without the use of color coding. Accordingly, there is no apparent reason provided by the teachings in the references that would motivate one of ordinary skill in the art to use color in the system of Kraft.

The Office has failed to provide the necessary motivation to combine, merely making a conclusory statement that it would have been obvious to modify the system of Kraft, as taught by Rickey, "to include colored fingering numbers placed above the musical notes for the purpose of instructing a student the fingering corresponding to the string." However, as pointed out above, Rickey uses color to aid the user in discriminating between different sets of displayed information on a chart, and coordinating that information between various regions of the chart. This use of color, as taught by Rickey, is a completely separate idea from placing colored fingering numbers above musical notes on a sheet of music, as is suggested by the Office. Thus, the Office's proposed motivation is entirely unsupported by the references.

In fact, it is Appellant's position that the use of colored fingering numbers on a musical staff, as suggested by the Office, is entirely inconsistent with the teachings of both Kraft and Rickey. As discussed above, Kraft clearly teaches a method of communicating information to users regarding which string is to be acted upon, which involves the use of small parallel lines C placed in relation to the notes on the page. According to Kraft, these lines are arranged in parallel both to each other and to the direction of the stems of the notes. The lines are used

because they have a visual appearance similar to that of the strings of an instrument, and are arranged vertically on the staff lines so that they will be impressed on the mind of the player in substantially the same order that the strings and stems of the note symbols impress themselves. Kraft, page 2, lines 21 to 37. Every embodiment of Kraft uses some version of these small lines to communicate information to the player regarding which string to play. See Figures 2 and 3 and the corresponding explanation of these Figures on page 2, lines 73 to 110. These teachings are inconsistent with the use of colored numbers, since there is no evidence on the record that colored numbers would provide the desired effects of using parallel lines taught by Kraft, such as visual similarity to strings on an instrument.

The teachings of Rickey are also inconsistent with the Office's proposed motivation because Rickey teaches color surrounding each fingering number on a simulated fingerboard, not on a musical staff. See Rickey, column 5, line 73 to column 6, line 5, and Figure 4. It would appear from the teachings of Rickey that it is the association of the fingering number with the color coded regions of the simulated fingerboard that communicates to the user what string is to be played using what finger. Because the regions of the keyboard in Rickey are colored merely to allow the user to easily distinguish between the various string regions on the keyboard, as discussed above, Rickey provides no suggestion for using color in conjunction with numbers placed along a musical staff.

Accordingly, for each of the reasons provided above, the Office's proposed motivation of using colored fingering numbers placed above the musical notes for the purpose of instructing a student the fingering corresponding to the string is unsupported by, and arguably inconsistent with, the teachings of the references. There is no evidence found in the record of any suggestion or motivation to modify the reference as suggested by the Office. Without a finding of

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substantial evidence found in the record, no *prima facie* case of obviousness exists, and the rejection should be reversed.

Additionally, and for the sake of argument only, even if one of ordinary skill in the art were to combine the teachings of Kraft and Rickey as suggested by the Office, it would not result in the Appellant's invention, as claimed. Claim 7 recites, among other things, that "the colored fingering numbers indicate the string on which the student should place a finger and indicate the hand position of the student's hand on the fingerboard and the finger that should be used."

The Offices proposed combination would not result in a system where colored fingering numbers indicate: 1) the string, 2) the hand position, and 3) the finger that should be used, as required by claim 7. This is because there is no teaching by either reference of using color to indicate either the string on which a student should place a finger, or the hand position of the student's hand on the fingerboard. As pointed out above, Kraft does not mention the use of color, and Rickey uses color merely to discriminate between regions on a fingerboard and for coordinating the information of those regions with the graphic notation region. Without some teaching of using colored fingering numbers to indicate both the string on which a student should place a finger and the hand position of the student's hand on the fingerboard, every limitation of the claims is not taught, and no *prima facie* case of obviousness exists.

For this additional reason, the Office's rejection of Claim 7 should be reversed.

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VIII. CONCLUSION

For the foregoing reasons, Appellant respectfully requests that the rejection be reversed, and such action by the Board is most courteously solicited.

Respectfully submitted,

HOLLAND & MIDGELY, LLP

Dated: May 19, 2005

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CLAIMS APPENDIX

7. A system for instructing a student to play music on a stringed instrument having a fingerboard, the system comprising:

sheet music comprising a musical staff and musical notes with colored fingering numbers placed above the musical notes,

wherein the colored fingering numbers indicate the string on which the student should place a finger and indicate the hand position of the student's hand on the fingerboard and the finger that should be used.

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EVIDENCE APPENDIX

No additional evidence is being filed with this appeal.

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RELATED PROCEEDINGS APPENDIX

There are no related proceedings, as indicated in Section II of this Brief.